



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

FEBRUARY 14, 2006

PRESENT: Acevedo, Koepp-Baker, Benich, Escobar, Lyle, Mueller

ABSENT: None

LATE: Davenport who arrived and was seated at 7:06 p.m.

STAFF: Planning Manager (PM) Rowe and Minutes Clerk Johnson

Chair Lyle called the meeting to order at 7:00 p.m., and led the flag salute.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Lyle presented the opportunity for public comment.

Commissioner Benich said he has received several inquiries as to why a grocery is not permitted at the Cochrane Plaza shopping center. Responding to those inquiries, he asked Chair Lyle and/or Commissioner Mueller (both of whom are knowledgeable of the original actions), "Why not?" ***Commissioner Mueller responded with the explanation which included: "The City Council at that time was not in favor of the having the shopping center in any event. Members of the public took the initiative and put the measure on the ballot. That ballot measure was strictly driven by the public and did not emulate from the City Council in any way."*** Commissioner Mueller continued: The approval by the voters had been conditioned, with one of the conditions that there would be no grocery store in Cochrane Plaza because of concerns that the mall must not detract from the nearby Business Park. "The language was literally written into the initiative and it would take a vote of the people to make any change," Commissioner Mueller stated.

CDD Molloy Previsich noted that any change in the current rules could be by a vote of the people, possibly in the June, 2006 election.

Commissioner Koepp-Baker clarified that the election determining the provisions of the occupancy of Cochrane Plaza had been in early 1987 or possibly 1988.

With no member of the audience indicating a wish to address matters not on the agenda, the time for public comment was closed.

MINUTES:

**JANUARY 24,
2006**

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE
JANUARY 24, 2006 MINUTES WITH THE FOLLOWING CORRECTIONS:**

NOTE: Chair Lyle's name was inadvertently omitted from the list of Commissioners present.

Page 6, paragraph 7, and line 3: ... inspections passed on the 3rd **BMR** unit

Page 9, paragraph 5, fourth bullet (delete and replace): ***the current proposal places a 229-unit project with 95 of the units in one section that includes 8 BMR allocations from the 134-unit open market rate section with 3 of those units earmarked for low-income and 5 units designated median-income units***

Page 9, paragraph 8:~~low income~~ affordable

Page 10, paragraph 3: ...for ~~market~~ **moderate**

Page 11, paragraph 3, line 8: ~~tolerant~~ **tolerable**

Page 11, paragraph 8, (add bullet): *willingness to distribute a quantity of the BMRs throughout the entire project*

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: DAVENPORT.

Commissioner Davenport arrived and was seated at 7:06 p.m.

**1) ZA-05-28:
OAK HILL-
SPERA**

A request for approval to amend the zoning to allow an addition to a single family home to maintain its existing non-conforming roofline located at 3455 Oak Hill Ct.

PM Rowe presented the staff report, noting this is a request for a small addition to an existing house. PM Rowe explained that in this location, the building heights are measured differently from any other place in town. Building heights for homes in the Jackson Oaks development are measured vertically from the centerline of the street at the high point (ground elevation) of the lot. For this lot, the maximum building height relative to the high point should not exceed 15 feet. This specific home, he said, has a height of 22 feet. Elsewhere in the City, building heights are measured from the average ground contact point at the front of the building to the top of the roof. It appears that is how the building height was determined this dwelling. Many of the other homes in Jackson Oaks have been built with heights measure from the ground elevation at the front of the building. PM Rowe indicated that he had spoken with an architect who has lived in the area for 40 years who related that the City's definitions of 'height elevation' has changed through the years, as he told PM Rowe of ways the residents had devised 'to cope'. PM Rowe explained that a proposal before the Commissioners was to amend minor exceptions section of the Municipal Code. PM Rowe advised that action (text amendment changes) under consideration would allow additions to dwellings that would not exceed the existing non-conforming height of the residence. If approved, PM Rowe said, the new regulations would permit Administrative approval for remodels and additions which would promote improved site plans or architectural design in areas where the scenic views or solar access on surrounding properties would not be affected. He also explained that an Administrative authorization could be beneficial in having each minor

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exception reviewed on a case-by-case basis rather than applying a change in

the allowable height that would apply to the total Jackson Oaks area. Because of concerns regarding additions to existing residences which might cause interference with visibility of exiting dwellings, PM Rowe explained, proposed required findings and language have been developed that would accommodate those concerns.

Commissioner Koepp-Baker noted that in the staff report reference was made to a 'significant number of homes' and asking for quantification. PM Rowe responded that while a statistically sound survey had not been completed, it appeared that at least 40% of the dwellings in the area under discussion do not meet currently acceptable height requirements.

Chair Lyle, for the benefit of the audience present, cautioned that any action regarding the matter (text change amendment) would not provide specific approval to the applicant who would have to continue the process.

Chair Lyle opened the public hearing.

Abraxis Spera, PO Box 163593, Sacramento, told the Commissioners that he is the designer working on the project. Mr. Spera said the owner's intention from the beginning was 'to go with the existing building, incorporating some minor changes to accommodate the expansion'. Mr. Spera said he has been talking with the neighbor who expressed some concerns, and believes those concerns can be alleviated. Mr. Spera told of the cost already expended by the applicant 'to get the amendment going'.

Stan Frederick, 3445 Oak Hill Court, told the Commissioners he lived 'directly above the proposal' and indicated with the pictures concerns of visual interest he had. Mr. Fredrick pledged to work with the designer to alleviate his concerns of possible obstruction of sight views to Anderson Lake.

Commissioner Mueller commented that the procedure under consideration would address Mr. Fredrick's concerns.

With no others present indicating a wish to speak to the matter, Chair Lyle closed the public hearing.

The Commissioners engaged in discussion regarding notification requirements for minor exceptions. PM Rowe advised that all adjacent property owners receive a 10-day notice for comments prior to an administrative decision on the minor exception request.

Commissioner Benich reiterated that the action under consideration was not specific to the parcel, but would cause action affecting the others in the vicinity.

Chair Lyle reopened the public hearing.

Mr. Fredrick asking that, assuming the permission for renovation/remodel/addition was subsequently granted, what recourse would be available to those who did not agree? PM Rowe explained the appeal process; first to the Planning Commission, then to the City Council.

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The public hearing was closed.

Commissioner Koepp-Baker asked if the 10-day period referenced is normal? [Yes for this type of request.] Commissioner Koepp- Baker indicated thinking this is a very short period. CDD Molloy Previsich advised this doesn't necessarily mean a decision will be made immediately at the end of 10 days.

Commissioner Koepp-Baker continued by saying it is of concern because a number of residents who are out of town periodically may not have sufficient time for response.

Chair Lyle was requested to reopen the public hearing.

Mr. Spera said, regarding the current process, the applicant brought the house in February, 2005 and no modifications had been made to the house in the meantime. However, now the applicant is making this his home and feels the variation is appropriate. Mr. Spera said the proper notifications have been given to all property owners as required.

Dave Yodge {?} (card not provided/voice on recording not clear) is a 'neighbor of Mr. Fredrick, wanted to be sure he received notice of the planned alteration'. He said he just wants to be included in the notification process, as he lives behind and up from the subject property.

The public hearing was closed.

COMMISSIONER MUELLER OFFERED A RESOLUTION RECOMMENDING APPROVAL OF AN AMENDMENT TO CHAPTER 18.56 OF THE MORGAN HILL MUNICIPAL CODE, AMENDING THE MINOR EXCEPTIONS, TOGETHER WITH THE FINDINGS AND CONDITIONS CONTAINED THEREIN AND WITH EXHIBIT A AS PRESENTED. COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

**2)UP-05-15:
VINEYARD-KFG
FRANCHISE
MANAGEMENT**

A request for approval of a use permit to allow a Little Kids Gym at an existing building on the corner of Vineyard and Concord Circle at 15750 Vineyard Blvd #190. The subject site is approximately 3.24 acres and is zoned Planned Unit Development (PUD) with an underline designation of Industrial.

PM Rowe gave the staff report, noting the location and calling attention to the findings required. PM Rowe explained the nearby property uses, including parking, and the potential for a dual ventilation system, as this had been a concern in the past for uses that involve children (e.g., educational services) in proximity to industrial uses. Responding to items in the staff report, Commissioner Benich noticed that this site was formerly occupied by Gavilan college and asked if there would be fewer kids with this proposal than there had been with college students? [yes]

Chair Lyle said there would not be a restaurant at the facility, but a small kitchen only; PM Rowe concurred and provided an overview of the appliances to be installed.

Commissioner Mueller requested additional information regarding previous requests for

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use (a Church), peak time traffic trips, hazardous materials transport, backup air ventilation systems, and requirements for noticing of uses in the building(s).

Commissioner Acevedo asked about the location of a nearby dance studio. [To the west]

Chair Lyle opened the public hearing.

Carol Kromer, 5616 Croydon Ave., applicant/owner, was present with the Commissioners asking her to address:

- instructors [Ms. Kromer said she would be the ‘main employee; with a program director working under her; “We’re looking for teacher, such as high school students from the upper grades.”
- written evacuation plan [Ms. Kromer explained the training, manuals, and business assistance from the corporation to be received once a lease is signed]
- need for Fire Department approval of a written evacuation plan so instructors will know what to do in case of emergencies; training { evacuation plan} by managers and to on-site workers
- public access to the building [main entrance from Vineyard; emergency ingress/egress at rear of building]
- concerns of having parents escort the children into the facility and/or stay during the sessions

Ms. Kromer explained that she had been working in a similar facility in San Jose and that parents were required to enter the lobby area with the children, but they were not required to stay, although some do wish to do so.

With no others indicating a wish to speak to the matter, the public hearing was closed.

Commissioner Mueller called attention to Page 7, sections 7f and J, noting this contains stronger language than with previous agreements. PM Rowe responded these sections were written specifically for this operation.

Other items discussed were on Page 10, section 12e, where it was clarified that the building is already sprinklered; and the proposal for an additional condition for approval of an evacuation plan.

Commissioner Acevedo also suggested adding a condition that children never be left unattended for ‘drop-offs’, as he expressed concern of the lack of sidewalks and safe walking distances. Thereupon, Commissioner Escobar asked about the requirement for having the children signed in on arrival. PM Rowe likened this to the requirements at the Learning Center at E. Main Avenue and Butterfield regarding escorting children.

Discussion ensued regarding a ‘capped’ age for children to be escorted into the building. Commissioner Benich said the policy should not be too restrictive with ‘older kids being OK, but not the smaller ones’. Commissioner Mueller suggested letting staff pick the ‘cut off’ age for escort.

Chair Lyle was requested to reopen the public hearing.

Ms. Kromer told Commissioners of the location of the San Jose gym (busy shopping area

with several large stores) and assured there had been no problems on entrances. Ms.

Kromer said she thought having the smaller children escorted in to be 'most conscientious'.

Commissioner Escobar said he thought it best to let staff and the applicant work out the details of the requirements of the operation.

CDD Molloy Previsich asked about having the requirement of children under age 10 being escorted in? Ms. Kromer said it was customary to have the children under age 10 escorted in and went on to explain that instructors are in the lobby with children after class until all are picked up. She explained that the lobby will be equipped with toys and things to occupy those waiting. "We've never had a child escape," she declared.

The public hearing was closed.

COMMISSIONER MUELLER MOTIONED TO APPROVE A RESOLUTION APPROVING A USE PERMIT FOR THE MORGAN HILL'S LITTLE KIDS GYM LOCATED AT 15750 VINEYARD BLVD., SUITE 190, INCLUSIVE OF THE FINDINGS AND CONDITIONS, WITH THE FOLLOWING MODIFICATIONS:

PAGE 21, XXIII SECTION 23 (add)

A: BEFORE FINAL OCCUPANCY IS GRANTED, AN EVACUATION PLAN APPROVED BY THE FIRE DEPARTMENT SHALL BE IN PLACE.

B: BEST PRACTICE WILL BE TO HAVE A REQUIREMENT BY THE BUSINESS THAT ALL CHILDREN AGE 10 AND UNDER ARE TO BE ESCORTED INTO THE BUILDING ON ARRIVAL AND PICKED UP FROM THE SUPERVISED LOBBY AREA.

COMMISSIONER ACEVEDO PROVIDED THE SECOND TO THE MOTION WHICH PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Chair Lyle – with the concurrence of the remaining Commissioners – moved agenda item 4 to this point in the meeting.

**4) EARLY
START OF
CONSTRUCTION
POLICY**

Under consideration by the Commissioners: a policy recommendation to the City Council to allow an early start of construction for projects awarded a building allocation.

PM Rowe presented the staff report by giving the rationale for changes to the process. The City Attorney raised questions during a review of the possibility of starting building early, as several of the developers receiving allocations had indicated this to be beneficial. PM Rowe reiterated the requirements of Measure(s) P and C and said the current recommendation had surfaced as an idea to expedite the entitlement process in discussion with the Subcommittee (Chair Lyle and Commissioner Mueller). Under the proposal, projects could be completed sooner/earlier, which was a desire of the City leaders. The developers would be asked to determine potential early start dates as part of

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the project application. Under Measure P, an early start of construction beginning on

April 1 in the prior fiscal year would be possible as long as the units were not completed and occupied until after the start of the fiscal year in which the allotments must be used, according to the decision of the City Attorney. Under Measure C, the start of construction date was moved up to March 1 because building allotments under Measure C must be awarded no later than 16 months prior to the start of the fiscal year that the allotment must be used. July 1 is the start of the fiscal year and 16 months prior to that date is March 1. Because the building allotment is actually awarded a year earlier than the current start of construction date, an earlier than March 1 start date is possible.

PM Rowe presented the proposed Resolution which could become a recommendation to the City Council, calling attention to the third and fourth 'whereas(s)'. Chair Lyle commented that the fourth *whereas* is exceptionally valuable, as he recalled that the potential for some projects to start early would offset those which are 'historically late', while the third *whereas*, Chair Lyle said, would clarify that if a project was not fully allocated, but was a multi-family project, allocations could be started together.

Commissioner Mueller expressed some concern that the fourth *whereas* could become 'tricky', with PM Rowe explaining that if the allocations were started during the first year of eligibility, the project could 'go later', so it would work.

Commissioner Acevedo asked, "How productive is it to look at this at this time when Commissioner Mueller and Chair Lyle are part of a 'study subcommittee'?"

Chair Lyle clarified that the Subcommittee is charged with looking at the downtown allocation issues only. Chair Lyle informed that as part of the process of setting up the initial set of allotments, the possibility of this process (early start) came up during the discussions and it would make decisions better for the allocations process if the commitments for early starts were made by the developers.

Commissioner Acevedo noted there is still talk of Measure C adjustments through a ballot initiative. "So why now?" he asked. Chair Lyle reminded that it would not likely be until a November ballot for action and it is necessary to have action on the matter now.

Commissioner Benich asked if the development community has had input and if they were in favor? PM Rowe advised talks with several in the development community and they reacted favorably, as this would present the possibility to finish projects essentially a year earlier, than now.

Chair Lyle opened the public hearing.

Benny Kwong, 2169 E. Francisco Blvd., San Rafael, questioned the policy change and addressed concerns regarding the timing of his project's building allotment.

PM Rowe clarified that Mr. Kwong in all probability would be more interested in agenda item 3.

Mr. Kwong continued, saying he is in favor of the earlier start time. Chair Lyle advised the order of the agenda, saying item 3 would be heard later. For Mr. Kwong's benefit, Chair Lyle stated this proposed policy would most likely help developers who were

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interested in participating in an earlier start date.

Dick Oliver, 385 Woodview Ave, #100, said a concern would be: if in the development agreement there was not a provision that should the agreement timelines not be met with the early start, the developers might not be permitted to ask for extensions.

CDD Molloy Previsich clarified that for certain performance(s) a range of dates in the development agreement – and set by the developer – might be accepted. Mr. Oliver said that would be preferable.

With no others present to address the matter, the public hearing was closed.

Commissioner Benich said he was ‘baffled’ by a proposal that appeared to provide some benefit for some developers, but with others asking for delays. “The two just don’t add up,” Commissioner Benich asserted.

Chair Lyle responded that the City and the developers may still have problems with projects in the first year, but when the developments ‘get rolling’, the 2nd and 3rd years will be ok. He spoke on the occasional difficulties of a developer ‘not being on board’, but confirmed thinking this proposal would be effective.

Commissioner Mueller said that one concern would be writing provisions into the development agreement exactly, as the Planning Commission could not grant deviations. “The Planning Commission can’t change development agreements. Only the City Council can do that. If the developers have change and the Planning Commission could have the ability to change dates, it would be better for the developers and the City.

CDD Molloy Previsich said she would be willing to work to have inclusion(s) for provisions of some flexibility in the development agreement. “We could probably incorporate that into the next generation of development agreements,” she said.

Commissioner Mueller responded that the Planning Commission has been told in the past that the development agreements are a non-delegatable authority. CDD Molloy Previsich promised to look at the matter.

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO RECOMMEND APPROVAL OF A CITY COUNCIL POLICY ALLOWING EARLY START OF CONSTRUCTION FOR PROJECTS AWARDED A RESIDENTIAL BUILDING ALLOCATION. THE MOTION PASSED WITH THE FOLLOWING VOTE: ACEVEDO, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER; NOES: BENICH, DAVENPORT both of whom said they were not opposed to the concept, but felt action at this time was ‘jumping the gun’; Commissioner Davenport said he would like to see that language of a revised development agreement which contains the proposed flexibility discussed; ABSTAIN: NONE; ABSENT: NONE.

The regular order of the agenda was resumed.

**3) AWARDING
OF FY 2005-06
(RDCS)
COMPETITION**

PM Rowe gave the staff report, advising that at the February 1, 2006 City Council meeting, an appeal of the Planning Commission RDCS project evaluations had been considered. The Council, on the appeal, affirmed and modified the Commission’s scoring and awarded an additional five points to the Shiraz application, making it eligible

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ALLOTMENTS for allocations due to the findings of the City Council. PM Rowe reminded that

FOR FY 07/08, FY 08/09 AND the number of the allocations was set by Measure C, as he reviewed the requirements of the Measure, including the provision of biennial adjustments.

RECOMMENDED

FY 09/10

DISTRIBUTION

In reviewing the matter, PM Rowe said, the 2007-08 and 2008-09 allocations awarded a year ago for outside the downtown area included some unallocated units (18 total) that were to be awarded in a RDSC competition to be conducted in Fall 2006. At their December 7, 2005, the City Council authorized the Planning Commission to award these allotments in the current Downtown competition. In addition to these 18 allotments, the City Council 80 allotments in 2007-08 and 40 allotments in 2008-09 for the Downtown Area competition.

PM Rowe called attention to Exhibit C, Recommended Distribution of Building Allocations FY 2007-08/2008-09 & 2009-10, whereby there would be some portion of allocations still available for ongoing projects. The on-going projects have been of concern for some time regarding how slowly they are building out, he said. PM Rowe then turned to the requirement for distribution of housing types, noting the recommendation for FY 2009-10 for a greater percentage multi-family housing that is typical for higher density development. Measure C requires no less than 33% of the allotment must go to single-family units. The 33% single family requirement will not be achieved with the recommended FY 2009-10 distributions. PM Rowe recommended that the Commission include a recommendation that a greater percentage for single family units be set-aside in FY 2010-11, which would provide a two-year average at 33% single family housing and thus satisfy the requirement of Measure C.

PM Rowe told of the work of the Subcommittee (Chair Lyle and Commissioner Mueller) which had consumed about five hours of meetings to look at the distribution with various scenarios being presented. He also referenced the questionnaire sent to each of the applicants regarding scheduling, the responses of which the Subcommittee had perused. PM Rowe further explained the two methods to award allocations. The first approach is to award allotments to the highest scoring project and proceed down the list in order of total point awarded until all of the available allocations are distributed. Under this approach, the Sunsweet Project and the Shiraz project would not receive an allotment.

Discussion ensued regarding the possibility of more benefit if a more equitable plan could be devised to achieve the goals of the General Plan, with some Commissioners noting, "Top down (awarding) is not always preferential; there could be more flexibility."

The Commissioners discussed the following issues with staff:

- Mr. Kwong has a higher scoring project for downtown, but is concerned about not being permitted (at the present times) to start until later. Mr. Kwong indicated in the questionnaire response that he wants to start the entire project in FY 2008-09
- specific projects and the number of allocations needed for completion of those
- proposed Resolutions 3a, 3b, and 3c for each of the three competition categories: recommendations for the various years were made according to results of questionnaire provided to the developers
- no resolution had been provided for the on-going Open Market Category distribution; PM Rowe explained the need for passage of a motion by the Commissioners, with a resolution being presented at the next Commission

meeting

- the need to review schedule status of various projects
- possibility of postponing the matter of the on going project allotments until the City receives new population numbers from the CA Department of Finance
- a time line
- possible decision of some allocations with information provided to the City Council

Prior to opening the public hearing, Chair Lyle announced communication in the form of e-mails sent to various Commissioners from a number of developers.

Dick Oliver, 385 Woodview Ave., #100, said that the Mission Ranch Project, listed as 04-26 had originally received the first of the allocations in 1994, with actual construction beginning in 1996. Mr. Oliver said that it was important to remember those years, as the current rate that the project is receiving allotments; the project would be 'finaled' for allocations in 2015, and 2016 would see final occupancy – for a total of 20 years after the first allocation was received. Mr. Oliver called attention to the language (staff report) on page 5, as he asked: if additional allocations are given/ awarded and the project does not proceed, would the Commissioners consider giving those allocations to Mission Ranch, which would also help in project progression during the third year.

Mr. Oliver spoke to Exhibit C, and noting that in the last five competitions, Mission Ranch had ranked higher than other projects such as Diana-Chen, which was eight points below the Mission Ranch application, then the Dempsey project six points below that – along with others, with all projects being given the same consideration (14 allotments each), but making a difference in having the higher scoring on-going project of Mission Ranch being given the opportunity for earlier completion.

Chair Lyle ascertained that Mr. Oliver would favor being able to commence with allotting now to on-going projects, rather than June.

Craig Miott, 2532 Santa Clara Ave, #175, spoke on concerns of allocations being considered at the present time. Mr. Miott said while he supports downtown development, he thought it unfair to favor all projects in downtown, as that 'sets a bad precedence'. Mr. Miott said, "I think there should be a ballot measure to set allocations/increase downtown locations. I believe the people would support that." Mr. Miott explained that he had concerns of taking project allocations from 2006, as well as concerns about the reduction of set-asides, declaring he thinks there is 'need for consistency'. Another concern, Mr. Miott said, is that of extension of set-asides: pushing projects out further each year. "I want completion sooner, rather than later," he declared. "I'm looking for consistency, but am not clear on what's happening."

Chair Lyle reminded that the City must make allotments by March 1, with a ballot measure coming later.

Mr. Miott asked about whether all allotments had been given in the past?

Chair Lyle referenced the one project that would not be getting allotments, even with a minimum passing score.

Scott Schilling, 16060 Caputo Dr., #160, spoke in support of having the unallocated

Micro Competition remain for a Micro Competition. He spoke of the South Valley Developers protect at Cochrane and Monterey, as he asked for some “if then” language: a provision that if the ballot measure passes and then it becomes possible that more allocations are available, they should be for ongoing projects. Mr. Schilling stated, “The intent appears to be clear that the allocations will be for ongoing projects. If there are additional allocations other than downtown, those should go to ongoing projects, such as Mission Ranch and South Valley Developers. It does make a difference when we are going through the tentative map process if we know numbers; it saves time, effort, and money and would keep us from coming back with a tentative map with an earlier start date.

Discussion ensued as to the possibility that if there is intent to award allocations, it could be noted on a tentative map.

Scott Murray, 175 E. Main Ave., reiterated talks with PM Rowe as he was the only applicant who got a higher passing score for allocation, but did not receive the entire allotment requested. Mr. Murray asked for consideration, as the businesses would be moving from the site. The project would need no less than the 99 units allotted (out of a total 136 units requested) in order for the project to get its financing.

Chair Lyle asked Mr. Murray if he could expect to start the project even with the cement business currently located on the site. Mr. Murray stated the moving process for the cement plant had already begun.

Benny Kwong, 2169 E. Francisco Blvd., San Rafael, asked the Commissioners for allocations for his applications. “I can do the project in sections,” Mr. Kwong said. “I want to begin as soon as possible.” Chair Lyle asked Mr. Kwong how long it would be to construct. Mr. Kwong responded, “14 months.” Chair Lyle echoed, “The physical construction would be 14 months.” Exploring the matter further, Chair Lyle said, “If you were to start July 1, 2008 you would not have the project completed for occupancy until September, 2009.” Mr. Kwong concurred, adding, “I want to start as early as possible.” He then stated, “July 1, 2008 is the latest date for starting the project.” ***Chair Lyle specifically asked Mr. Kwong, “Then I understand that you are saying July 1 is an acceptable start date.” Mr. Kwong emphatically replied, “Yes.” During the brief interchange which followed, Mr. Kwong also indicated that July 1, 2008 would be physically feasible as a start date.***

Maureen Upton, 8339 Church St., #209, Gilroy, restated what other speakers had indicated regarding the allocations for FY 2009-10, adding the applicant she represents would be happy to begin earlier than previously noted. “Also,” Ms. Upton said, “if any additional allocations from non-starters were to be given to ongoing projects, we think it would be better for tentative map submission.” Ms. Upton further indicated a preference for ‘set-asides’. Chair Lyle remarked that ‘timeliness sooner would be good if the applicants are ready for tentative map submittals’.

Mr. Oliver returned to the podium, telling the Commissioners that he had actually submitted a tentative map for Mission Ranch, but did not know if approval could be made, as he did not know of the number of allocations. “If possible it would be good to have the tentative map in place even if the allocations are not in place,” he said.

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Don Lapidus, 991 Solana Ct., Mountain View, was present, asking Commissioners to include him in the 'tentative map anticipation'.

With no others present to address the matter, the public hearing was closed.

PM Rowe advised that it would be *really important* for the Commissioners to consider that the allocations for FY 2007-08 must be approved at this evening's meeting for City Council action by March 1. "With respect for that year, commitment needs to be made now," he said. He reiterated the policy of returned/unused allocations being awarded to ongoing projects.

Commissioner Acevedo agreed that allocations should be made available to ongoing projects for completion of those projects. "But I don't like hypothetical(s), so any change in additional allocations absolutely should go to on-going projects, thereby eliminating the possibility of a competition."

Commissioner Benich spoke on the possibility of passage of a November ballot measure passing which would exempt downtown and voiding the current Measure C restrictions, which would cause those allocations to become available to ongoing projects without other competitions.

CDD Molloy Previsich cautioned it is difficult to prejudge how a ballot measure might play out, adding the intent was to make available more FY 2009-10 allotments for allocation.

PM Rowe advised that if a developer wants more than 15 allocations, they could apply in upcoming competitions (FY 2010-11) with an opportunity there for securing more allocations.

Commissioner Benich commented there is need to complete ongoing projects and not to be constantly starting new projects.

Chair Lyle said if the Commissioners were to go through and do the allocations as projected, there would need to be 225 units reserved for on going projects to allow those projects to be completed.

Commissioner Mueller indicated that a matter that needs to be addressed is the 20% set aside for affordable housing as the total net includes those that have already been given away as allotments to categories that 'don't count'. Discussion followed regarding the matter with the following being noted:

- the City is probably 'about 100' units (BMRs and Affordable) behind the 20% set-aside for Affordable
- some Open Market could be called Affordable [Commissioner Mueller disagreed, saying, "No, there are deed restrictions, as well as income restrictions.]
- the City has some 'makeup' to do

Commissioner Acevedo was excused at 8:52 p.m. in view of the upcoming vote on a Resolution for the distribution of the building allotments in the Residential Development Control System Small Vertical Mixed Use Project Competition for the Fiscal Years 2006-

07, 2007-08, and 2008-09, with recommendation of partial allocations for Fiscal Year 2009-10, due to the proximity of his business to the area under consideration.

COMMISSIONER MUELLER OFFERED THE RESOLUTION APPROVING THE DISTRIBUTION OF THE BUILDING ALLOTMENTS IN THE

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM SMALL VERTICAL MIXED USE PROJECT COMPETITION FOR THE FISCAL YEARS 2006-07, 2007-08, AND 2008-09 AND RECOMMENDING A PARTIAL ALLOCATION FOR FISCAL YEAR 2009-10, INCLUSIVE OF THE FINDINGS AND CONDITIONS CONTAINED THEREIN *WITH A MODIFICATION OF THE ADDITION OF A SECTION FURTHER RECOMMENDING RESERVATION OF A GREATER PERCENTAGE OF THE TOTAL ANNUAL BUILDING ALLOCATION IN SUBSEQUENT FISCAL YEAR COMPETITIONS AS NECESSARY TO ACHIEVE THE 20% AFFORDABLE HOUSING REQUIREMENT, WORKING TO PROVIDE CORRECTION OF THE CURRENT DEFICIENT IN AFFORDABLE HOUSING UNITS.* COMMISSIONER ESCOBAR SECONDED THE MOTION WHICH PASSED WITH THE FOLLOWING VOTE: AYES: BENICH, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO.

Commissioner Acevedo rejoined the meeting at 8:53 p.m.

Regarding the matter of the Affordable Project Competition, Chair Lyle noted the City is behind in this category, but that information is not included as part of the Resolution. Commissioner Mueller agreed the data should be in the Resolution. Commissioner Acevedo noted that from a General Plan standpoint, the City needs to show only efforts made in the matter. Commissioner Mueller disagreed, citing General Plan policy differs from the Measure C language.

CDD Molloy Previsich joined the discussion, saying that the Government Code requires that the City must show that the General Plan Land Use Plan, the number of acres of available residential land, can meet the Housing Element requirements for residential development. Commissioner Mueller disagreed with her analysis. Commissioner Acevedo maintained the City must only prove it has the capacity to do so. Chair Lyle clarified that Commissioner Acevedo was referencing ABAG numbers, and was correct in that, adding it appeared that the Commissioners were unclear as to the requirements of the RDA. Commissioner Acevedo expressed opposition to including 'extra language'.

PM Rowe offered suggestion of adding a Section 3 to the proposed Resolution currently under discussion where the Planning Commission would recommend the City Council reserve a greater percentage of the total annual building allocation in subsequent fiscal year competitions as necessary to achieve the 20% affordable housing requirement and to make up the current deficit in affordable housing units. Agreeing with that proposal, **COMMISSIONER MUELLER OFFERED A RESOLUTION APPROVING THE DISTRIBUTION OF THE BUILDING ALLOTMENT IN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AFFORDABLE PROJECT COMPETITION FOR THE FISCAL YEARS 2007-08 AND 2008-09 AND RECOMMENDING A THIRD-YEAR ALLOCATION FOR FISCAL YEAR 2009-10. COMMISSIONER ESCOBAR NOTED THE FINDINGS AND CONDITIONS**

CONTAINED WITHIN THE RESOLUTION, AS HE SECONDED THE MOTION, WHICH PASSED WITH THE UNANIMOUS AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.

Turning to the matter of the distribution of the building allotments in the Residential Development Control System Downtown Open Market Project Competition (for the Fiscal Years 2007-08, 2008-09 and the potential of recommending a third-year of allocations for Fiscal Year 2009-10), Chair Lyle noted that Mr. Kwong had *indicated in their January response to staff that they wished all 80 allotments to be awarded for FY 2008/09, but that Mr. Steinle's February 14, 2006 letter had requested an earlier start.*

Wishing to fully verify the certainty of the statements, Chair Lyle opened the public hearing.

Chair Lyle asked Mr. Kwong if it was his wish to start all of the allocations awarded in May, 2008.

Mr. Kwong responded, "Yes, even earlier."

Chair Lyle asked if it would be possible to meet the objectives and finish by July 1, 2009.

Mr. Kwong again, responded, "Yes."

The public hearing was closed.

Thereupon, Chair Lyle indicated thinking that Section 4 of agenda item 3C was 'too narrowly drawn'. Considerable discussion ensued, with the following being noted about the wording of Section 4:

- excess/leftover allocations should go with ongoing projects
- need for maximum flexibility as to what the Planning Commission can do (if can't build the project(s), it would depend on the status of other developers, including the ability to do the projects)
- not limit this section to the Shiraz application
- generally if projects are not complete, the Planning Commission would award the allocations to ongoing projects or set aside those allocations for upcoming competitions

Commissioner Mueller commented that, without taking in the possibility of elections, there is a need to look at building in some flexibility - not necessarily giving allocations to the 'next available project', but consideration by the Planning Commission as to the need to use those allocations for ongoing projects. Chair Lyle agreed, as did Commissioner Koepp-Baker who said, "Yes, it depends on timing."

As the discussion evolved, consensus was reached to strike language in Section 4, retaining only the first two sentences of the Section.

Commissioner Mueller commented he would be in favor of allocating any remaining allocations to the *Open Market* Category.

CDD Molloy Previsich supported having the Commissioners 'simply forward the

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recommendation to the City Council so the FY 2009-10 allotments confirm what the Planning Commission is doing for FY 2009-10'. She reminded that at the City Council March 1 meeting, determination would be made regarding the award of allocations in the third-year (2009-10).

COMMISSIONER ACEVEDO OFFERED THE RESOLUTION, INCLUDING THE FINDINGS AND CONDITIONS CONTAINED WITHIN, APPROVING THE DISTRIBUTION OF THE BUILDING ALLOTMENTS IN THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM DOWNTOWN OPEN MARKET PROJECT COMPETITION FOR THE FISCAL YEARS 2007-08, 2008-09 AND RECOMMENDING A THIRD-YEAR OF ALLOCATIONS FOR FISCAL YEAR 2009-10, WITH MODIFICATION TO SECTION 4 (RETENTION OF ONLY THE FIRST TWO SENTENCES) AND ADDING SECTION 5: AWARDING UNUSED/RETURNED ALLOCATIONS TO ON-GOING PROJECTS WITH THE AIM OF PROJECT COMPLETION *WITH A MODIFICATION OF THE ADDITION OF A SECTION FURTHER RECOMMENDING RESERVATION OF A GREATER PERCENTAGE OF THE TOTAL ANNUAL BUILDING ALLOCATION IN SUBSEQUENT FISCAL YEAR COMPETITIONS AS NECESSARY TO ACHIEVE THE 20% AFFORDABLE HOUSING REQUIREMENT, WORKING TO PROVIDE CORRECTION OF THE CURRENT DEFICIENT IN AFFORDABLE HOUSING UNITS.* COMMISSIONER ESCOBAR SECONDED THE MOTION, WHICH CARRIED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, KOEPP-BAKER, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

Chair Lyle commented that awarding the fiscal year 2008-09 allotment in this competition eliminates the need to hold a competition in September. The developers and applicants preparing for a competition this fall are on notice that the next competition will not take place until 2007.

ANNOUNCEMENTS:

None

ADJOURNMENT:

Chair Lyle declared the meeting adjourned at 9:09 p.m.

MINUTES PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk